

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CHICAGO TRUCK DRIVERS, HELPERS AND )  
WAREHOUSE UNION (INDEPENDENT) PEN- )  
SION FUND, a Trust, and JACK STEWART, its )  
Fund Manager and one of its Trustees, )

Plaintiffs,

V.

LLA CONSTRUCTION HOLDING, INC., an  
Illinois Corporation f/k/a ALL Construction Co.,  
Inc. and a/k/a A.L.L. Construction Co., Inc.

Defendant.

## COMPLAINT

Plaintiffs, the Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) Pension Fund and Jack Stewart, allege as follows:

## JURISDICTION AND VENUE

1. This is an action for collection of delinquent withdrawal liability payments, interest, and penalties incurred by an employer as a result of a withdrawal from a multiemployer pension plan.

2. This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”). This Court has jurisdiction over this action under section 4301(c) of ERISA, 29 U.S.C. § 1451(c).

3. Venue lies in this court under section 4301(d) of ERISA, 29 U.S.C. § 1451(d), in that the Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) Pension Fund is administered in Chicago, Illinois. This is an action pursuant to section 502(a)(3) of the Em-

ployee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(3), as amended, for the collection of delinquent withdrawal liability obligations.

#### **PARTIES**

4. Plaintiff, Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) Pension Fund ("PENSION FUND") is a multiemployer plan within the meaning of sections 3(37) and 4001(a)(3) of ERISA, 29 U.S.C. § 1002(37) and 1301(a)(3). The plaintiff fund manager, JACK STEWART, is a trustee and a fiduciary of the PENSION FUND.

5. Pursuant to section 4301(a)(1) of ERISA, 29 U.S.C. § 1451(a)(1), the plaintiff fund manager is authorized to bring civil actions on behalf of the PENSION FUND, its participants and beneficiaries for the purpose of collecting withdrawal liability.

6. LLA CONSTRUCTION HOLDING, INC., ("Defendant") is a dissolved Illinois corporation that was formerly known as ALL Construction Co. and was also known as A.L.L. Construction Co. Inc. Defendant operated in this judicial district and Defendant was dissolved on November 9, 2006. At all relevant times, Defendant was engaged in an industry affecting commerce, as defined by section 301(a) of the LMRA, 29 U.S.C. § 185(a), and is an "employer" as defined by section 3(5) of ERISA, 29 U.S.C. § 1002(5).

#### **CLAIM FOR RELIEF**

7. The PENSION FUND determined that in 2005, Defendant permanently ceased all covered operations and effected a withdrawal as defined in section 4203 of ERISA, 29 U.S.C. § 1383, from the PENSION FUND.

8. By letter dated April 5, 2007 PENSION FUND issued a notice of withdrawal liability and demand for payment of withdrawal liability in accordance with sections 4202(2) and 4219(b)(1) of ERISA, 29 U.S.C. §§ 1382(2) and 1399(b)(1). Defendant received this letter on or

about April 9, 2007. This notice and demand notified Defendant that it was required to discharge its liability in a lump sum of \$444,755.17 by May 1, 2007, or by making 80 quarterly installment payments of \$9,790.00 commencing on that date. A true and correct copy of the April 9, 2007 notice and demand (excluding enclosures) and a copy of the certified mail delivery receipt evidencing delivery are attached to this complaint as Exhibit A.

9. Defendant failed to make the required withdrawal liability payments to the PENSION FUND.

10. By letter dated May 21, 2007, the PENSION FUND issued a past due notice in accordance with section 4219(c)(5), 29 U.S.C. § 1399(c)(5), notifying Defendant of the consequences of its failure to pay the withdrawal liability assessments. Defendant received the May 21, 2007 past due notice on May 22, 2007. A true and correct copy of the May 21 letter and a copy of the certified mail delivery receipt evidencing delivery are attached to this complaint as Exhibit B.

11. Defendant failed to make the required withdrawal liability payments to the PENSION FUND and has failed to initiate timely arbitration under section 4221 of ERISA, 29 U.S.C. § 1401 and the governing rules. Consequently, the amount demanded by the PENSION FUND is due and owing pursuant to section 4221(b)(1) of ERISA, 29 U.S.C. § 1401(b)(1). After all proper adjustments and credits, Defendant owes the PENSION FUND the principal sum of \$444,755.17.

WHEREFORE, Plaintiffs request the following relief:

- a) A judgment against Defendant on behalf of Plaintiffs, in the sum of at least \$444,755.17;
- b) A judgment for the interest at the prime rate per annum;

- c) A judgment for liquidated damages in an amount equal to the greater of either interest on the unpaid contributions, or 20% of the unpaid contributions;
- d) A judgment for court costs, and reasonable attorneys' fees as required by section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2);
- e) That this Court retain jurisdiction of this cause pending compliance with its order; and
- f) For such further or different relief as this Court may deem proper and just.

Respectfully submitted,

/s/ Thomas J. Angell  
Thomas J. Angell  
One of Plaintiff's Attorneys

Thomas J. Angell  
William W. Leathem  
M. Garrett Hohimer  
Jacobs, Burns, Orlove, Stanton & Hernandez  
122 S. Michigan Ave., Ste. 1720  
Chicago, Illinois 60603  
(312) 327-3437

# EXHIBIT A

**CHICAGO TRUCK DRIVERS, HELPERS AND WAREHOUSE  
WORKERS UNION (INDEPENDENT)®**

1645 WEST JACKSON BLVD, SUITE 500  
CHICAGO ILLINOIS 60612  
(312) 738-3920  
(312) 738-3930



**BOARD OF TRUSTEES**

*Employee Members*  
Jack Stewart  
Fred Boudreau  
Bernie Sherlock  
Tom Daly, Alternate

*Employer Members*  
H. Edward Barnicle  
William H. Carpenter  
John Naughton  
John Broderick, Alternate

April 5, 2007

**PENSION FUND**

Via First Class & Certified Mail

ALL Construction Co., Inc  
Mr. Luis Puig, President & Registered Agent  
1414 W. Willow Street  
Chicago, IL 60622


**Re: A.L.L. Construction Co., Inc Assessment of Withdrawal Liability**

Dear Mr. Puig:

The Trustees of the Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) Pension Fund ("Fund") have determined that ALL Construction Co., Inc. effected a complete withdrawal from the Fund on or about April 30, 2005, as defined by Section 4203 of the Employee Retirement Security Act of 1974 ("ERISA"), as amended by the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. § 1383. Pursuant to ERISA § 4001(b)(1), 29 U.S.C. § 1301(b)(1), a withdrawn employer and all trades or businesses under common control with it are liable for the withdrawn employer's proportionate share of the Fund's unfunded vested liabilities, (*i.e.* withdrawal liability). You are hereby notified in accordance with ERISA § 4219, 29 U.S.C. § 1399, that your withdrawal liability has been calculated to be \$444,755.17. This amount is payable in either a lump sum on or before May 1, 2007, or payable in 80 quarterly installments of \$9,790.00, with payment to commence on the first day of each calendar quarter beginning with May 1, 2007. A copy of the calculation, payment schedule, and the actuarial assumptions used are enclosed.

We wish to call to your attention that in the event you default in making the required quarterly payments, the Trustees may require immediate payment of the entire outstanding amount of liability from the due date of the first payment which was not timely made. Your attention is further directed to ERISA §§ 4219 and 4221 for a description of the rights you may have in connection with this assessment of withdrawal liability.

Sincerely,

  
Jack Stewart  
Pension Fund Manager

Enc.

pc: Mr. L. Bachan  
Pension Fund Trustees  
Mr. Tom Angell, Jacobs, Burns et al

Certified Mail - Return Receipt Requested #7003-2260-0005-5034-5477

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <i>[Signature]</i> Agent <input type="checkbox"/> Addressee <input type="checkbox"/></p> <p>B. Received by (Printed Name) _____ C. Date of Delivery <i>4-5</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to:</p> <p>Mr. Luis Puig, President &amp; Reg Agent A.L.L. Construction Co., Inc 1414 West Willow Street Chicago, IL 60622</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7003 2260 0005 5034 5477</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

7003 2260 0005 5034 5477

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PS Form 3800, June 2002 See Reverse for Instructions

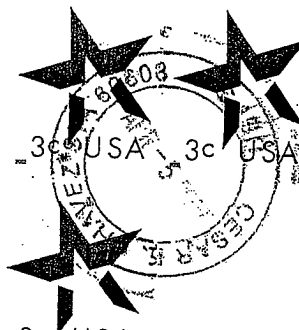
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**1645 W. JACKSON BLVD, SUITE 500**  
**CHICAGO, IL 60612**

Affix fee here in stamps or meter postage and post mark. Inquire of Postmaster for current fee.



Mr Luis Puig, President & Reg Agent  
 A.L.L. Construction Co., Inc  
 1414 West Willow Street  
 Chicago, Illinois 60622



PG

# EXHIBIT B



**CHICAGO TRUCK DRIVERS, HELPERS AND WAREHOUSE  
WORKERS UNION (INDEPENDENT)®**

1645 WEST JACKSON BLVD, SUITE 500  
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Tom Daly, Alternate

*Employer Members*

H. Edward Barnicle  
William H. Carpenter  
John Naughton  
John Broderick, Alternate



**PENSION FUND**

May 21, 2007

Via 1<sup>st</sup> Class & Certified Mail

Mr. Luis Puig  
ALL Construction Co., Inc  
1414 W. Willow Street  
Chicago, IL 60622

Dear Mr. Puig:

On April 5, 2007 the Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) Pension Fund Board of Trustees notified you of withdrawal liability assessment under the Employer Retirement Income Security Act ("ERISA"), as amended. The withdrawal liability quarterly payment of \$9,790.00 due on May 1, 2007 has not been received. As of May 30, 2007 the amount owed is \$9,856.30 including interest, with a daily interest rate of \$2.21 per day for each day after May 30, 2007.

If said payment with interest is not received within 60 days of receipt of this letter, the Plan will accelerate the indebtedness without further notice or demand and the outstanding withdrawal liability balance, plus interest accrued, will be due and payable. This notice is given pursuant to ERISA section 4219(c)(5).

Sincerely,

Jack Stewart  
Pension Fund Manager

JS:pjg

c: Ms. P. Gabriel  
Mr. T. Angell

Certified Mail – Return Receipt Requested 7003-2260-0005-5034-5507

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 ■ Print your name and address on the reverse so that we can return the card to you.  
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Luis Puig  
 ALL Construction Co., Inc  
 1414 W. Willow Street  
 Chicago, IL 60622

2. Article Number 7003 2260  
*(Transfer from service)*

PS Form 3811, August 2001 Domestic

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